

MINUTES OF MEETING  
MAPLE RIVER WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
JUNE 5, 2014

The Maple River Water Resource District met on June 5, 2014, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Gerald Melvin, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Brittany C. Moen, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Mike Opat, Engineer for the Board; Brady Woodard and Matt Hildreth, Moore Engineering, Inc.; Vern Bennett, Cass County Commissioner; Paul Faught, property owner in Wheatland Township; and those whose names appear on the attached roster.

**Minutes**

It was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to approve the minutes of the May 1, 2014, meeting.

**Pontiac Township Improvement District No. 73**

Mike Opat updated the Board on Pontiac Township Improvement District No. 73. He reported that Reach 7 of the Project is complete and working properly, but high water levels have made it difficult for the project contractor to remain on schedule. The Board considered a request from the contractor for a time extension on the project.

It was moved by Manager Suhr and seconded by Manager Melvin to authorize the Water Resource District Attorney to send a letter/claim to the Water Resource District Engineer stating the Maple River Water Resource District is denying the request from Reiner Contracting, Inc. for a time extension on the Pontiac Township Improvement District No. 73 Project and that the Maple River Water Resource District will not assess liquidated damages at this time, provided the contractor appears to be making a good faith effort to complete the project in a timely manner, but submits this claim to preserve its right to assess liquidated damages. Upon roll call vote, the motion carried unanimously.

The Cass County Highway Department has expressed an interest in taking over the easements along the project in order to use the spoil material for a road project in the area that will be constructed in the next year or two.

The Cass County Sales Tax Committee approved a request by the Water Resource District for additional funding for Pontiac Township Improvement District No. 73 at its meeting last month, increasing the total cost share on the project to \$500,000.

#### **Garsteig Dam pipe repair**

Brady Woodard reported on the damages to the concrete principal spillway pipe at Garsteig Dam. The pipe was viewed internally to assess damages, showing that the grout on the joints of the pipe is deteriorating. Mr. Woodard will continue to monitor the site, and says the pipe is currently stable, but may be an issue after additional rainfall. The estimated cost of the repair is \$15,000-\$25,000. Another option would be to use a slip line conduit, with liner, which would cost approximately \$100,000.

#### **Upper Maple River Dam**

Mr. Opat reviewed discussions from a meeting with the State Engineer's Office regarding the Upper Maple River Dam project permit. A dam break analysis was completed last week from the project location to Cass County Highway 26 in order to review the dam classification. He explained that the project remains classified as a medium impact hazard dam, and is comfortable proceeding with the design. Mr. Opat said final plans and specifications should be completed by the end of July.

The Board discussed potential project timelines. Mr. Opat said the State Engineer's Office indicated they would act on the permit within 90 days.

The Board discussed appraisals on property required for the project. Mr. Opat said appraisals have been distributed to landowners for review. He distributed draft *Permanent Flood Easements* and *Purchase Agreements* for the Board to review. The Maple-Steele Joint Water Resource District will meet at 8:00 a.m. on Wednesday, June 11, 2014, to discuss the issue further.

#### **Drain #39 slide repairs**

Brady Woodard said work on Drain #39 slide repairs will begin once the weather conditions allow.

#### **Drain #46 cleanout**

It was moved by Manager Melvin and seconded by Manager Suhr to authorize Moore Engineering, Inc. to hire a contractor to cleanout Drain #46, starting at the south end, at a cost not to exceed \$50,000. Upon roll call vote, the motion carried unanimously.

#### **Cass-Richland Drain #1 repair work**

Mr. Woodard reviewed repair work completed at Cass-Richland Drain #1. Two pipe were replaced at the crossing between Sections 34 and 35 of Davenport Township and material was added to stabilize the site.

Mr. Woodard explained that he has met with landowners and there is significant erosion where open ditches enter the drain. It was moved by Manager Suhr and seconded by Manager Melvin to authorize Moore Engineering, Inc. to proceed with installing culverts where there are existing open ditches into Cass-Richland Drain #1 in Sections 1 and 2 of Barrie Township to eliminate erosion problems into the drain. Upon roll call work, the motion carried unanimously.

#### **Inspections of Maple River Water Resource District facilities**

Mr. Woodard informed the Board that the inspection of Maple River Water Resource District facilities has been completed. He will provide a summary of the inspection at a future meeting.

#### **Lake Bertha Flood Control Project No. 75**

Mr. Opat presented information regarding Lake Bertha Flood Control Project No. 75. He explained that the project would allow for detention of water in the spring, that could be released in the fall when conditions downstream allow. The project had been previously put on hold due to access issues. He presented alternate options for the Board's review. The project will be discussed at a future Cass County Joint Water Resource District meeting to see if that Board would take the lead on the project.

#### **Application to Install a Subsurface Drain #20145 for Paul Faught and Steve Link in the SE 1/4 of Section 22 and the SE 1/4 SW 1/4 of Section 23 in Wheatland Township**

The Board reviewed *Application to Install a Subsurface Drain #20145* for Paul Faught and Steve Link in the SE 1/4 of Section 22 and the SE 1/4 SW 1/4 of Section 23 in Wheatland Township. *Thirty-Day Notices* have been sent out to downstream landowners. The Board advised Paul Faught to acquire the necessary flowage easements for the project, and a letter of approval from Cass County.

#### **2015 budget and 2014 maintenance levy assessments**

The Board will discuss the 2015 budget and 2014 maintenance levy assessments at the next meeting.

#### **Application to Install a Subsurface Drain #20143 for John Andvik and Kelly Perhus in the S 1/2 of Section 35 in Davenport Township**

The Board previously approved *Application to Install a Subsurface Drain No. 20143* dated April 11, 2014, for John Andvik and Kelly Perhus. However, the Board approved the *Application* contingent upon review of the County's Highway 27 right-of-way; the Board did not initially require Applicants to obtain flowage easements from the owners of the NE 1/4 of Section 35 and the SE 1/4 of Section 26 in Davenport Township, under the assumption the tile discharge would be solely within Highway 27 right-of-way owned by the Cass County Highway Department. However, upon further review, the County does not own its highway right-of-way along those parcels and, therefore, the Board reconsidered its previous approval of *Application to Install a Subsurface Drain No. 20143* to consider the possibility of requiring flowage easements from landowners in those quarters.

The Board once again reviewed an *Application to Install a Subsurface Drain No. 20143* dated April 11, 2014, for John Andvik and Kelly Perhus. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the “statewide” elements, therefore, the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer’s Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the S 1/2 of Section 35 in Davenport Township, Cass County, North Dakota. The project will include a pump outlet near the southeast corner of Section 35; the pump will discharge directly into the west highway road ditch along Cass County Highway 27; the tile discharge will then flow north along the east boundary of Section 35, in Cass County Highway 27 right-of-way. LiDAR indicates tile discharge will continue to flow north.

Mike Opat previously reviewed the application and reviewed the LiDAR and concluded the project will flow north through county highway right of way. The Board did provide *Thirty-Day Notices* under N.D. Cent. Code Section 61-32-03.1 to the Cass County Highway Department as well as landowners in the E 1/2 of Section 26. Although the tile discharge will flow in Cass County highway right-of-way along the east boundary of Sections 35 and 26, and the Board will require applicants to obtain permission from the Cass County Highway Department to utilize its right-of-way to accommodate tile discharge, the Board will also require applicants to obtain flowage easements from landowners in those parcels since the County has easement rights, but does not own its highway right-of-way in fee. The Board concluded the tile discharge will result in prolonged wetness, potential cattail growth, disrupted access, and sediment build-up in the highway road ditch.

According to records on file with the Cass County Recorder’s Office, Constance Andvik and Matthew Andvik own the SW 1/4 of Section 35, subject to a life estate in John Andvik. Randy and Deann Jawaski own a small 4.5 acre parcel in the SW 1/4, but Applicants’ proposed tile plan indicates the project will not include tile on the Jawaski’s property. Kelly Perhus owns the SE 1/4 of Section 35, subject to a small exception regarding property owned by Linda Strommen; the project plan indicates the project will not include tile on Ms. Strommen’s property. With regard to the downstream properties, Laverne Sullivan, Sean Sullivan, Shannon Sullivan, Susan Sullivan and Thomas Sullivan own the E 1/2 NE 1/4 of Section 35; and Amber Krivitsky and Tracy Ann Janke own the E 1/2 SE 1/4 of Section 26; the tile discharge from Applicants’ project will flow along the east boundary of these parcels.

It was moved by Manager Suhr and seconded by Manager Melvin to amend the motion previously adopted by the Board at its meeting on May 1, 2014 to approve *Application to Install a Subsurface Drain No. 20143* dated April 11, 2014, for John Andvik and Kelly Perhus in the S 1/2 of Section 35 in Davenport Township, and to approve the *Application*, subject to the following conditions:

1) That Applicants obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Davenport Township, Cass County, North Dakota:

- a. E 1/2 NE 1/4 of Section 35; and
- b. E 1/2 SE 1/4 of Section 26.

2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;

3) That Applicants obtain written permission from Cass County to discharge into, or otherwise utilize, any of its county highway right-of-way;

4) That Applicants notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;

5) That Applicants notify the Maple River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;

6) That Applicants must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Board;

7) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

#### **Garsteig-Embden Maintenance District – public hearing**

Mr. Opat reviewed a PowerPoint presentation regarding the proposed Garsteig-Embden Maintenance District. He displayed a map of the proposed maintenance district for the Garsteig and Embden Dams, explaining their benefits, and gave a brief history of each. The dams were both constructed by the Federal government in the 1960s, and the responsibility of maintaining the dam infrastructure was turned over to the Water Resource District. With no funding source currently in place for the dams, the District is unable to properly maintain the structures.

Mr. Opat reviewed current maintenance concerns on the dams, and added the dams may not meet current safety design requirements. He said without proper maintenance, significant and potentially deadly failures could occur.

Assessment districts are commonly established for the purpose of maintaining a federally constructed project. Mr. Opat explained the process of creating an assessment district. A hearing must be held before a vote can take place.

Bruce Buchholtz asked if there are other projects that need maintenance work. Mr. Opat said Garsteig and Embden Dams are the Board's priority as they have not been maintained in many years.

Mark Weber said he commends the Board and County Commission for recognizing this issue, as the dams have been problematic for some time. He said he urges the Board members and Cass County Commissioners to vote in favor of a maintenance district.

Hank Weber asked about snagging and clearing issues. Mr. Fredricks explained a snagging and clearing district would be formed in a similar way as the assessment district process.

Ken Pawluk asked what the estimated cost for repairs would be on the Garsteig Dam structures. Mr. Opat said it is currently unknown if the dam is adequately designed for the amount of water that flows through it. If it is found that it is not adequately designed, the structure may need extensive repairs. He explained that other repairs on the dam are known to be needed immediately.

Chairman Olson explained examples of cost-share opportunities that may be used on the dams from other projects, such as the Upper Maple River Dam.

Larry Hoffmann asked why the Water Resource District has not done anything for maintenance on the dams before if they have been made responsible for the dams. Mr. Fredricks explained that although the District is responsible for the dams, there have been no funds to make necessary repairs. Mr. Hoffman said he is concerned that a repair is required on a pipe that was already repaired in the past. Chairman Olson said the District had to look at what was affordable at the time, as all repairs to the dams up to this point have been out of the Water Resource District's general fund.

Mr. Pawluk asked if the Garsteig-Embden Maintenance District will be a perpetual district, if approved. Mr. Fredricks said it would be. Mr. Pawluk added that he would be in favor of the maintenance district if landowners express their desire for something to be done, but to remind landowners that a maintenance district can at times assess \$4 per acre. Manager Suhr said cost-share partners for necessary repairs are available now, and the district does not anticipate assessing the upwards limit for some time.

Mr. Pawluk added that the Water Resource District has done a good job of making projects as fair to the landowner as possible by being aware of funding opportunities as they arise.

There being no further discussion on the matter, Chairman Olson closed the hearing.

**Bills**

It was moved by Manager Melvin and seconded by Manager Suhr to approve the payment of Checks #5226 through #5241 and the electronic funds transfer, as presented. Upon roll call vote, the motion carried unanimously.

**2014 meeting dates**

The next Maple River Water Resource District meeting will be held at the Page Auditorium in Page, North Dakota, at 9:00 a.m. on June 25, 2014.

**2013 Audit**

It was moved by Manager Melvin and seconded by Manager Suhr to approve the 2013 Audit of the Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

**Review of open meeting laws**

Mr. Fredricks reviewed the policies and procedures for the Maple Water Resource District regarding open meeting laws.

**Adjournment**

There being no further business for the Board to consider, it was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to adjourn the meeting.

APPROVED:

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Rodger Olson  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer